IN THE

Supreme Court of the United States.

OCTOBER TERM, 1900.

No. 287.

R. A. WILLIAMS, PLAINTIFF IN ERROR,

vs.

EDGAR FEARS, SHERIFF, AND R. B. AYCOCK, JAILER.

IN ERROR TO THE SUPREME COURT OF GEORGIA.

BRIEF OF COUNSEL FOR PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

R. A. Williams, the plaintiff in error, was arrested by Edgar Fears, the defendant in error, sheriff of Morgan county, Georgia, on January 14, 1900. The arrest was by virtue of a criminal warrant charging him with the offense of "acting as emigrant agent without a license." This warrant was based on an act of the General Assembly of Georgia imposing an annual occupation or business tax "upon each emigrant agent, or employer or employé of such

agents, doing business in this State, the sum of five hundred dollars for each county in which such business is conducted." An emigrant agent is defined to be "a person engaged in hiring laborers in this State to be employed beyond the limits of the same" (Record, p. 13).

The law further provides that a failure to pay the tax shall be a misdemeanor, subjecting the offender to a fine of not less than double the tax, or to confinement in the chain gang.

Plaintiff in error thereupon presented his petition for *habeas corpus* to the judge of the superior courts of the Ocmulgee circuit. The petition for *habeas corpus* alleged that the arrest and detention of the petitioner was unlawful, because the law charged to have been violated was in conflict with certain named clauses of the State and Federal constitutions.

On January 16 a hearing was had on the petition and answer thereto, no question of fact being raised by the pleadings. The statute was adjudged to be constitutional and the defendant was remanded to the custody of the law.

Exception to this judgment was taken to the supreme court of Georgia, and on April 11 the judgment of the superior court was affirmed by the supreme court. By writ of error the judgment of the supreme court of Georgia is brought to this court for review.

ASSIGNMENTS OF ERROR.

The first two grounds of error assigned are that the judgment of the supreme court of Georgia is contrary to law and the evidence.

The third assignment of error is that the supreme court of Georgia erred in declaring constitutional and valid the act of the General Assembly of Georgia, imposing an occupation tax of five hundred dollars per annum, for each county in which the business is conducted, "upon each person engaged

in hiring laborers in this State to be employed beyond the limits of the same," because said law imposes a tax on commerce among the States and levies a duty on exports, and therefore conflicts with and violates article 1, section 8, paragraph 3, and article 1, section 9, paragraph 5, of the Constitution of the United States.

The fourth assignment of error charges that said judgment is in conflict with and violative of the fourteenth amendment to the Constitution of the United States:

1. Because the act of the General Assembly of Georgia thereby declared valid restricts the right of the citizen to remove from one State to another and abridges the privileges and immunities of the citizen.

2. Because said law impairs the natural right of the laborer to labor; it is a tax on the laborer, and therefore class legislation, aimed entirely at laborers; it applies only to those laborers who seek employment beyond the State.

3. Because said law imposes a prohibitory tax (five hundred dollars) on the person hiring for employment *beyond* the State, and exempts the person hiring for employment *within* the State. The business being hiring for employment, the situs of the employment does not constitute a difference which separates the two into distinct classes, so as to make lawful the taxing of one and the exemption from taxation of the other.

The fifth assignment of error charges that the judgment of the supreme court of Georgia conflicts with and violates article 4, section 2, of the Constitution of the United States, because the law declared valid by said judgment is a denial to the non-resident of the equal protection of the law, in that it taxes the non-resident who seeks to obtain labor in Georgia and exempts the resident citizen from such tax.

ARGUMENT.

The issues presented by the record will be more clearly defined by two preliminary observations:

1. The law charged to be unconstitutional.

The term "emigrant agent," as used in the statute under review, is a technical term, and it means "a person engaged in hiring laborers in this State to be employed beyond the limits of the same."

The term has been so defined by the supreme court of Georgia in this case.

Record, pp. 13, 14, 15.

The definition is clearly correct (Black on Interpretation of Laws, Hornbook series, 1896, pp. 110, 112, 204, 365, 366). It has not been assigned as error by either party to this record; therefore it will not be reviewed by this court.

2. This law is not a police regulation.

Aside from the very excessive license, the act contains none of the elements of a police law.

In State *vs.* Moore, 113 N. C., 697, the supreme court of North Carolina, declaring void a statute of that State imposing a tax similar to this, held:

"The occupation of an emigrant agent does not belong to that class of trades or occupations which are so inherently harmful or dangerous to the public that they may be either directly or indirectly prohibited."

Joseph *vs.* Randolph, 71 Ala., 499, in adjudging unconstitutional a statute of that State, identical to the one now under review, says:

"5. Same; cannot be sustained as a legitimate exercise of the police power of the State. Said act has none of the characteristics of a law designed to provide regulations promotive of domestic order, morals, health, or safety or kindred subjects properly falling within the purview of domestic police."

In Brennan *vs.* Titusville, 153 U. S., 289, on pages 299, 300, Mr. Justice Brewer reviews the decisions of this court to the effect that laws of this character cannot be upheld as police regulations.

As the supreme court of Georgia holds this law to be a tax or revenue act (Record, p. 16), further authority is not needed to the effect that it cannot be sustained as a police regulation.

From the foregoing we deduce this proposition: Is it constitutional for a State to impose an occupation tax of five hundred dollars per annum, for each county in which such business is conducted, upon each agent, or employer or employé of such agent, engaged in hiring laborers in such State, to be employed beyond the limits of the same?

I.

It is insisted that the imposition of this tax conflicts with and violates article 1, section 8, paragraph 3, and article 1, section 9, paragraph 5, of the Constitution of the United States, because it regulates commerce among the States and levies a duty on exports.

If the occupation of "hiring laborers in this State to be employed beyond the limits of the same" is an occupation connected with, or relating to, interstate commerce, it is exempt from State taxation. A tax on an occupation connected with interstate commerce is a regulation of such commerce.

Brown *vs.* Maryland, 12 Wheaton, 419.
Robbins *vs.* Shelby Taxing District, 120 U. S., 489.
Leloup *vs.* Mobile, 127 U. S., 640.
McCall *vs.* California, 136 U. S., 104.
Crutcher *vs.* Kentucky, 141 U. S., 47, 58.
Brennan *vs.* Titusville, 153 U. S., 289.
Adams Express Company *vs.* Ohio, 166 U. S., 185, 218.

We quote from the opinion of Mr. Justice Cobb in this case:

"If the act imposes a tax upon persons engaged in commerce among the States, it is a regulation of such commerce and is void. Such a tax is in effect a tax upon the business itself. This has been so repeatedly ruled by the Supreme Court of the United States that it will not at this day be questioned" (Record, p. 16).

The conclusion reached by the supreme court of Georgia, however, is that the occupation of hiring laborers in a State, to be employed beyond the limits of the same, is not a business connected with commerce among the States (Record, p. 19). Plaintiff's insistence to the contrary narrows this issue down to the single question, What is commerce among the States?

In the opinion above referred to commerce is defined as "traffic, intercourse, navigation, and the transportation of persons and property and the means and instrumentalities by which these four things are effectuated" (Record, p. 17).

The following authorities are quoted from in support of that definition:

Gibbons *vs.* Ogden, 9 Wheaton, 1.
Brown *vs.* Maryland, 12 Wheaton, 419, 446.
Railroad *vs.* Fuller, 17 Wallace, 568.
Mobile *vs.* Kimball, 102 U. S., 691.
Gloucester Ferry Co. *vs.* Pennsylvania, 114 U. S., 196.
Wabash R. R. Co. *vs.* Illinois, 118 U. S., 557, 558.*

It is submitted that, while quite correct so far as it goes, the above definition is by no means exhaustive of the broad, comprehensive term contemplated by the framers of our organic law.

The cases cited are no authority that this business is not

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*Other definitions of "commerce" are to be found in Amer. & Eng. Encyclopedia of Law, 2d edition, vol. 6, pp. 218, 221; Amer. & Eng. Encyclopedia of Law, 1st edition, vol. 11, p. 540; also Commerce Clause Federal Constitution (Prentice & Egan, 1898), p. 43.

an occupation connected with interstate commerce. In none of them was the present question involved, and for it to have been decided, therefore, would be nothing short of unwarranted.

In Pensacola Telegraph Company *vs.* Western Union Telegraph Company, 96 U. S., 1, it is held:

"The powers conferred upon Congress to regulate commerce with foreign nations and among the several States are not confined to the instrumentalities of commerce known or in use when the Constitution was adopted, but keep pace with the progress of the country and adapt themselves to the new developments of time and circumstances."

And in Walling *vs.* Michigan, 116 U. S., 456, Mr. Justice Bradley quotes from the case of Mobile *vs.* Kimball, 102 U. S., 691, 697:

"The subjects, indeed, upon which Congress can act under this power are of infinite variety."

Means and agencies facilitating intercourse among the people, as well as their removal from State to State, are vitally essential to the common welfare and to national progress. For a State to restrict a business having for its object the migration of persons from one State to another, is of more concern to all the nation than for the sale or transmission of property to be restricted.

That immigration is comprehended in the term commerce has long been settled. In some of its features immigration is not fully covered by the four definitions of commerce which are cited above.

Immigration and emigration have here no legal distinction. Indeed, a sovereign power has greater right to prevent persons from entering her territory than to restrain them from leaving.

In the well-known Passenger cases, 7 Howard, 283, this court declared void, statutes of New York and Massachusetts

imposing a tax of one dollar and fifty cents on a shipmaster, for each passenger landed, "if for any one reason, because the law was a regulation of commerce." This decision was made after the case had been re-argued. The great mind of Mr. Daniel Webster and the astuteness of Mr. Rufus Choate, both of whom were counsel for the appellants, demonstrated clearly that persons, as well as property, are imports, and that persons are comprehended in the term commerce.

On page 405 of the opinion Mr. Justice McLean says:

"In a commercial sense, no just distinction can be made, as regards the law in question, between the transportation of merchandise and passengers. * * * Each is the subject of a commercial regulation by Congress."

And, on page 407:

"An import in its enlarged sense means any tax or tribute imposed by authority, and applies as well to a tax on persons as to a tax on merchandise. Any other construction would be an imputation on the intelligence of Congress."

In the Head Money cases, 112 U. S., 580, the facts being similar to the Passenger cases, the whole law was again reviewed. Mr. Justice Miller says, on page 591:

"That these statutes are a regulation of commerce is conceded."

On pages 591, 592, 593, the cases of Henderson *vs.* Mayor, 92 U. S., 259; Chy Lung *vs.* Freeman, 92 U. S., 275; People *vs.* Campagnie Generale Transatlantique, 107 U. S., 59, are quoted from in support of the proposition that immigration is commerce.*

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* Other authorities holding that immigration is commerce are Rorer on Interstate Law (1893), pp. 405, 406, and cases cited; Black, Constitutional Law, pp. 170, 171, 177, 178. Commerce Clause, Federal Constitution, pp. 192, 218; Bangor *vs.* Smith, 83 Maine, 426; Amer. & Eng. Encyclopedia of Law (1st ed.), vol. 9, p. 936.

The ruling of the supreme court of California is directly in point here. In Lin Sing *vs.* California, 20 Cal., 534, that court declares:

"1. The Federal Constitution has vested in the General Government the power to regulate commerce in all its branches; and this power extends to every species of commercial intercourse, and may be exercised upon persons as well as property.

"2. Commerce cannot be carried on without the agency of persons; and a tax, the effect of which is to diminish personal intercourse, is a tax on commerce. If the power to impose such tax is acknowledged—it being a sovereign power—no limitation can be affixed to its exercise and it may be so used as not only to diminish but to destroy commerce.

"3. Immigration, either temporary or permanent, is an ingredient of intercourse and traffic; and the power to regulate commerce implies the power to regulate, both as to persons and as to goods."

In McCall *vs.* California, 136 U. S., 104, a tax was sought to be imposed on a soliciting passenger agent. The agent's office was in Sacramento, California, and his business was to induce passengers bound for New York from California to go by way of Chicago, and thence to the East over the railroad which he represented.

This tax was declared void as violative of the commerce clause of the Constitution. We are unable to draw a distinction in principle between that case and the case at bar.

Two States have enacted laws identical with the Georgia law, to prevent the migration of the laboring population.

State *vs.* Moore, 113 N. C., 697, declares a law of North Carolina, imposing a tax of one thousand dollars on emigrant agents, to be void. It is true that an issue of uniformity entered into that case, because the law did not apply to the entire State. However, from the opinion as a whole, the court considered the law void for other and distinct reasons.

A statute of Alabama, imposing a tax of two hundred and

fifty dollars on this identical occupation, was held invalid by the supreme court of that State, in Joseph *vs.* Randolph, 71 Ala., 499. In the opinion under review that case is referred to in these words:

"We are aware that the supreme court of Alabama, in Joseph *vs.* Randolph, 71 Ala., 499, held an act similar to the one involved in the present case contrary to the interstate-commerce clause of the Constitution of the United States, but we cannot give our assent to the reasoning upon which that decision was based."

Record, p. 19.

Inasmuch as there is a direct conflict between these two decisions, and both being equal before this court, it has been deemed proper to cite the Alabama case at length. (The case of Joseph *vs.* Randolph, 71 Ala., 499, will be found in an appendix to this brief, on page 21. It will be the subject of further reference in the progress of this argument.)

The most anolagous law to the present one, ever construed by a Federal court, is the contract-labor law enacted by Congress. That law makes it penal to engage in the business of hiring or inducing foreign laborers to come to this country, by payment of passage or otherwise. It was passed to keep out foreign labor. This law seeks to keep the laborer from leaving. The underlying principle in each case is the same. The contract-labor law has been upheld, as a valid exercise by Congress of its exclusive power to regulate commerce.

U. S. *vs.* Craig, 28 Fed. Rep., 795, 798.

We have been unable to find any authority in line with the supreme court of Georgia. That court virtually admits that other tribunals hold differently to what it decides, as appears from the opinion of Mr. Justice Cobb. There it is said, in effect, that while individual members of this court may have held similar laws to be unconstitutional the court itself has not done so. (Record, p. 19.)

In the light of the foregoing authorities, it is submitted that commerce comprehends emigration, as well as traffic, intercourse, navigation, and transportation, and that a tax on an occupation connected with interstate traffic, intercourse, navigation, transportation, or emigration, is a tax on commerce among the States.

If, then, the removal of laborers beyond a State is emigration, and therefore commerce, it follows that a tax on an occupation connected therewith is a tax on commerce among the States, and beyond the power of the State to impose.

It cannot be contended that this business is too remotely connected with commerce to be protected by the commerce clause of the Constitution.

"Interstate commerce commonly begins with negotiations and contracts looking to transportation among the States."

Commerce Clause Federal Constitution, p. 61, and cases cited.

"The object of the commerce clause," says Mr. Justice Peckham, in Addystone Pipe Company *vs.* United States, 175 U. S., 227, "was to insure uniformity of regulation against conflicting and discriminating State legislation."

And in Bagg *vs.* Railroad Company, 109 N. C., 280, the commerce clause being under review, Avery, J., says:

"The test of constitutionality is involved in the inquiry whether its enforcement would tend to trammel the trade between citizens of different States or embarrass them in passing from one State to another."

That this law tends to trammel the trade between citizens of different States, and embarrasses them in passing from one State to another, is self-evident.

Finally, this clause should be liberally construed, to the end that sectional selfishness must have no part in this nation. No State should be allowed to obstruct national progress or individual prosperity, because a class of her popu-

lation cannot compete with other States. Through the commerce clause, as through no other agency, are we truly one nation and one people.

II.

It is next insisted that this law is in conflict with the fourteenth amendment, because—

(1.) It is an indirect effort to restrict the right of the citizen to move from one State to another, and abridges the privileges and immunities of the citizen.

(2.) It impairs the natural right of the laborer to labor; it is a tax on the laborer and is class legislation aimed entirely at laborers, and it applies to a class of laborers only, to wit, those who seek to labor beyond the State.

(3.) It imposes a tax of five hundred dollars, which is prohibitory in amount, on the person who hires laborers to work beyond the State and exempts the person who hires laborers to work within the State.

(1.) "The right of personal ingress or egress is a natural right, dependent on no express constitutional provision" (1 Blackstone, 134).

"Many of the most important fundamental rights are usually not declared at all in the organic law, but simply taken for granted."

The right of the citizen to go wherever he sees fit is comprehended by the guarantee of the fourteenth amendment that—

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

That a citizen cannot be taxed directly by a State, for the privilege of leaving the State, is well settled. In the Passenger cases, 7 Howard, 464, Mr. Justice Grier says:

"It is not left to the discretion of each State in the Union either to refuse a right of passage to passengers or property, through her territory, or to exact a duty for permission to exercise it."

In Joseph *vs.* Randolph, 71 Ala., 499–508, the right of personal liberty is fully considered, and the reasoning of that tribunal appears conclusive of this question.

Appendix, p. 21.

Does this tax operate, by indirection, to hinder the free egress of the citizen?

"In whatever language a statute may be framed, its purpose and its constitutional validity must be determined by its natural and reasonable effect."

Henderson *vs.* Mayor, 92 U. S., 259.

And in the Passenger cases, 7 Howard, 283, Mr. Justice Grier says, on page 458:

"It is a just and well-settled doctrine established by this court, that a State cannot do that indirectly which she is forbidden to do directly."

It is also settled by the decisions of this court that the constitutionality of a State tax is to be determined, not by the form of the agency through which it is to be collected, but by the subject upon which the burden is actually laid.

Commerce Clause, Federal Constitution, p. 200.

So the supreme court of California (People *vs.* California, 34 Cal., 492), in holding unconstitutional a law of that State, which made it penal for an agent to sell tickets or contracts for passage on vessels leaving San Francisco for any port without the State, without placing a stamp, to be furnished by the State, on such tickets, used this language:

"Where the State has not the power, by means of direct legislation, to regulate the intercourse of her citizens with

other States, it cannot accomplish by indirect methods what it is forbidden to do directly" (citing numerous authorities on page 495).

In Crandall *vs.* Nevada, 6 Wallace, 35, a capitation tax of one dollar on transportation companies, for each passenger carried beyond the State, was held void as a tax on the passenger.

And in Chy Lung *vs.* Freeman, 92 U. S., 275, a statute of California, providing that the commissioners of immigration should require a bond of certain immigrants from China, was declared void in these words:

"But the features of the statute are such as to show very clearly that the purpose is to extort money from a large class of passengers, or to prevent their immigration to California altogether."

"A constitutional right conferred by the Federal Constitution cannot be taxed by the State, either directly or indirectly, because the power to tax carries with it the power to defeat and render useless, if not to destroy."

McCullough *vs.* Maryland, 4 Wheat., 316 (3).

The limitations upon State sovereignty, by the superior sovereignty of the United States, is fully defined on pages 425–431 of the decision last cited.

Tested by these rules, this law cannot stand.

It is evident that the statute under review is an indirect effort to impose a burden on laborers, to prevent them from leaving the State.

Nor does it matter that the tax is not imposed directly upon the laborer. It needs no argument to show that it must finally be paid by the laborer for the privilege of exercising the natural right to labor in another State.

(2.) This law should be pronounced void, as a tax on a special class of laborers. The elements of discrimination against particular members of this class are at once apparent.

The occupation sought to be taxed is that of "emigrant agent." But the only emigrant agents brought under the operation of the law are those who seek to hire laborers for employment beyond the State. All other classes of the community may be removed *ad libitum*. Even laborers may be removed for all purposes, except to be employed without the State. Laborers who seek to labor in another State are thus placed at a disadvantage.

In Parrott's Chinese case, 6 Sawyer, 349, a law of California making it an offense for any corporation to employ Chinese, was declared violative of the fourteenth amendment. We quote the portions of the judgment immediately bearing upon this case:

"7. The privileges and immunities * * * are all those rights which are fundamental, and of right belong to citizens of all free governments; and among them is the right to labor, and to pursue any lawful employment in a lawful manner.

"8. Property is everything which has an exchangeable value. Labor is property, and the right to make it available is next in importance to the right to life and liberty."

Low *vs.* Rees, 41 Neb., 127, holds a law, providing that a day's work for all classes of laborers, except farm laborers, shall be eight hours, to be class legislation, violative of the fourteenth amendment. Ritchie *vs.* Illinois, 155 Ill., 98, adjudged a law of that State, prohibiting the employment of females in factories for more than eight hours a day, to be contrary to the Constitution, in these words:

"1. The right to labor or employ labor, and make contracts in respect thereto, is both a liberty and a property right and is included in the guarantee of the Constitution, that no person shall be deprived of life, liberty or property without due process of law.

"2. While the right to contract may be subject to limitations growing out of the duties which the individual owes to society, the power of the legislature to limit such

right must rest upon some reasonable basis, and cannot be arbitrarily exercised."

Limestone Company *vs.* Fagley *et al.*, 187 Penn., 193, and Fraser *vs.* McConway & Torley Co., 82 Fed. Rep., 257, are cases where a law of Pennsylvania, imposing on every employer of foreign born, unnaturalized, male persons over 21 years of age a tax of three cents a day, for each day of employment, was held to be in conflict with the fourteenth amendment. On page 260 of the last-cited case Mr. Justice Acheson quotes from the Railroad Tax cases, 13 Fed. Rep., 722, 733, as follows:

"Unequal exactions in every form, or under any pretense, are absolutely forbidden, and of course unequal taxation, for it is usually in that form that the oppressive burdens are laid."

For further definition of "privileges and immunities" reference is made to the cases of Blake *vs.* McClung, 172 U. S., 248, and Stockton Laundry case, 26 Fed. Rep., 613, 614.

(3.) Very similar to the objection urged that this law is class legislation because it discriminates against laborers, is the objection that it is an arbitrary tax on certain agents engaged in hiring laborers, and that it does not apply to all agents following that occupation. It is observed that persons hiring laborers for employment *within* the State are not taxed, while those hiring laborers for employment *without* the State must pay a tax, which is nothing less than prohibitory.

While the State may exercise great latitude in the classification of subjects for taxation, these classifications must have some reasonable foundation. Discriminations based on location or residence have always been held void.

In Commonwealth *vs.* Snyder, 182 Penn., 630, an act of the legislature of Pennsylvania imposing a heavy license

fee upon peddlers in Perry county, but providing that the act shall not apply to peddlers dealing exclusively with the merchants of said county, nor to merchants residing and having a regular place of business therein, nor to the sale by citizens of said county, of products of their own growth or manufacture, was declared violative of the Constitution On page 633 Mr. Justice Williams says:

"What this bill undertakes to do is to * * * secure to residents a practical monopoly of the trade of the county. This is so evidently a violation of the Constitution of the United States that it is unnecessary to consider any other question. * * * It is a barrier built by the State of Pennsylvania about a single county to exclude therefrom the citizens of the rest of the Commonwealth and of the rest of the United States for the benefit of merchants living within the inclosure. This cannot be done."

Citing Welton *vs.* Missouri, 91 U. S., 275.

Sayre Borough *vs.* Phillips, 148 Penn., 482, is also a case where a discriminating peddling ordinance was held void, in these words:

"Such regulations must be directed against the business or practice of peddling and not against some of the persons who may be engaged in it. If a statute or municipal ordinance is so framed as to discriminate between the persons engaged in the same trade or pursuit, such statute or ordinance is not a police but a trade regulation, and therefore invalid."

Says this court in Gulf, Colorado & Santa Fé R'y *vs.* Ellis, 165 U. S., 151:

"The mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the fourteenth amendment, and in all cases it must appear not merely that a classification has been made, but also that it is based upon some reasonable ground—something which bears a just and proper relation to the attempted classification, and is not a mere arbitrary selection."

III.

The final objection urged to this law is that it is a denial to the non-resident of the rights and privileges allowed the citizens of Georgia.

Citizens of each State are guaranteed the right, under article 4, section 2, of the Federal Constitution, to buy and sell commodities in any other State, either personally or through agents, upon the same terms and subject to the same regulations as the citizens of such State. The hiring of labor is the same, in principle, as the purchase of commodities.

Under this law the employer in another State cannot obtain labor on equal terms with the resident employer.

Says Judge Cooley:

> "The Constitution secures in each State to the citizens of all the other States the right * * * to acquire and hold property, * * * and the right to be exempt, in property and person, from taxes or burdens which the property, or persons, of citizens of the same State are not subject to."
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> Cooley, Const. Limitations, 6th edition, p. 490.
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> *Id.*, p. 597, citing 71 Ala., p. 499.

This court has so repeatedly held invalid, State laws imposing a tax upon the sale of, or otherwise discriminating against, commodities or products of other States, that discussion of the subject would be fruitless.

Welton *vs.* Missouri, 91 U. S., 275.
Walling *vs.* Michigan, 116 U. S., 446.
Minnesota *vs.* Barber, 136 U. S., 313.
Brimmer *vs.* Rebman, 138 U. S., 78.
Voight *vs.* Wright, 141 U. S., 62.

In conclusion: The amount of the tax, and all its features, make the real object of this statute only too manifest.

It is not an effort to raise revenue. The legislature sought to create a labor monopoly for the benefit of employers in Georgia.

From the standpoint of the Georgia employer it is a most salutary law. From the standpoint of the laborer (who is most directly concerned), of the non-resident employer, of the commercial interests of the United States, and in the light of every principle of fairness and justice, it is a most vicious law.

It is a law utterly inconsistent with the traditions and institutions of this Government.

It is a law in conflict with both the spirit and the letter of the Federal Constitution.

JAMES DAVISON,

Counsel for Plaintiff in Error.

APPENDIX.

JOSEPH *vs.* RANDOLPH, 71 Ala., 499–508.

Decided December, 1882.

Action for money had and received for plaintiff's use.

1. (Right of transit through the State guaranteed to citizens by Constitution.)—Under constitutional provisions, both State and Federal, every citizen of the United States and of the several States of the Union have, as an attribute of personal liberty, the right of free egress from and transit through the State unless restrained by due course of law, and this right is subject only to such legislative regulations as may be imposed by the exercise of the police power of the State, or as may remotely affect it in the legitimate exercise of the power of State taxation.

2. (Constitutionality of statutes; how determined.)—A statute is to be interpreted according to the intention of the legislature, apparent on its face, and its constitutionality must be determined by its natural and reasonable effect.

3. (Same: Power of legislature to regulate constitutional right.)—No principle of construction is sounder than the common-sense and cardinal rule that "what cannot be done directly cannot be done indirectly," and hence a constitutional right, though subject to regulation, cannot be destroyed or impaired under the device or guise of being regulated.

4. (Act of January 22, 1879, unconstitutional.)—The act of January 22, 1879, providing that "no person, whether for himself or for other persons, shall be permitted to employ, engage, contract or in any way induce la-

borers to leave the counties designated in the act, for the purpose of removing said laborers from this State, without first paying to each of said counties in which such person shall operate a license tax of two hundred and fifty dollars, such license tax to be collected as other license taxes," etc., and declaring a violation of its provisions a misdemeanor, being an indirect tax upon the citizen's right of free egress from the State, and operating to hinder the exercise of his personal liberty, and to seriously impair his right to emigrate, is violative of both the State and Federal constitutions, and is void.

5. (Same: Cannot be sustained as a legitimate exercise of the police power of the State.)—Said act has none of the characteristics of a law designed to provide regulations promotive of domestic order, morals, health, or safety, or kindred subjects, properly falling within the purview of domestic police, and hence it cannot be sustained as a legitimate exercise of the police power of the State.

Opinion of the Court.

SOMERVILLE, *J.:*

The question presented for decision is a constitutional one, involving the validity of an act of the General Assembly of this State entitled "An act to require a person who employs or in any way engages laborers in the counties of Perry, Dallas, and other counties therein named, for the purpose of removing said laborers from the State, to pay a license tax," which act as originally approved on January 22, 1879, designated the amount of tax as one hundred dollars. It was amended December 8, 1880, so as to increase this license to two hundred and fifty dollars.

(Acts 1880–'1, p. 162.)

It provides that no person, whether through himself or through other persons, shall be permitted to employ, engage, contract, or in any other way induce laborers to leave the

counties of Dallas, Perry, etc., for the purpose of removing said laborers from this State, without first paying to each of said counties in which such person shall operate a tax of two hundred and fifty dollars, such tax to be collected as other license taxes.

It is insisted, among other things, that the plain intent and natural effect of this statute is to tax by indirection the constitutional right of the citizen to have free egress at all seasonable times by emigration from the State.

If this view be correct, it is clear that the validity of the act cannot be sustained. There can be no denial of the general proposition that every citizen of the United States and of each State of the Union, as an attribute of personal liberty, has the right ordinarily of free transit from or through the territory of any State.

This freedom of egress or ingress is guaranteed to all by the clearest implications of the Federal as well as of the State constitution. It has been said that even in England, whence our system of jurisprudence was derived, the right to personal liberty did not depend on any express statute, but it was the birthright of every freeman.

Cooley on Constitutional Limitations, p. 342.

This right was said by Blackstone to consist in the power of locomotion—of changing situation or of removing one's person to whatsoever place one's inclination may direct, without imprisonment or restraint, unless by due process of law.

1 Blackstone, p. 134.

For its summary vindication when illegally interfered with the writ of *habeas corpus* had its origin and was established with Magna Charta.

Hurd on *Habeas Corpus*, p. 143.

This liberty of interstate transit, thus based on the assertion of personal liberty, is referable to many clauses of the

Federal Constitution. In Ward *vs* Maryland, 12 Wallace, 418, 430, it was classed by Mr. Justice Clifford as one of the privileges and immunities of the citizens of the several States guaranteed to the citizens of each State by article 4, section 2, of the Constitution of the United States.

In the Passenger cases (7 Howard, 283) it was recognized by a majority of the Supreme Court of the United States as a right protected by the commerce clause of the Federal Constitution from hostile State legislation, and its existence was admitted by all and denied by none. Mr. Justice Wayne said that no State had the right to tax a foreigner or person for coming into one of the United States; that, he contended, would be a tax or revenue act in the nature of a regulation of commerce, and as such violative of the Federal Constitution.

Passenger cases, *supra*, p. 420.

In Crandall *vs.* Nevada, 6 Wallace, 35, the entire court concurred in the view that a capitation tax of one dollar imposed by the legislature of Nevada upon every person leaving the State as a passenger by railroad, stage coach, or other mode of conveyance was unconstitutional and void, the reason being that it infringed the natural right of every citizen to have free ingress and egress to and from and through the States and Territories composing a common, general government, a right fully recognized by all the judges as having an undoubted existence, although they differed as to the particular grounds upon which it could be rested.

Rorer on Interstate Law, p. 315.

Our present State constitution contains a recognition of the right under discussion that emigration shall not be prohibited in the fundamental maxim that "All men are endowed by their Creator with certain inalienable rights, among which are life, liberty, and the pursuit of happiness."

Constitution of 1875, secs. 1, 35.

The right of every citizen or person to enjoy free egress from or transit through the State is, in our opinion, an undoubted constitutional right. The framers of the Federal Constitution clearly intended that personal intercourse between the States should be, so far as practicable, as free as the transit of the ocean and as unmolested as the commerce of the public seas. It must forever remain unfettered and free, save subject to such regulations as may be imposed by Congress or the police power of the States or as it may be remotely affected by the legitimate exercise of the power of State taxation.

Let us examine this act so as to test it in the light of the foregoing propositions.

A legislative act is to be interpreted according to the intention of the legislature apparent on its face. So the purpose and constitutionality of a statute, in whatever way it may be framed, must be determined by its natural and reasonable effect.

Hudson *vs.* Mayor, 92 U. S., 259.
Chy Lung *vs.* Freeman, *id.*, 275.

Considering the statute now under consideration according to this rule, it cannot be sustained as an exercise of the police power of the State. This power is generally said to extend to the making of regulations promotive of domestic order, morals, health, and safety, having its just foundation in the public right of self-defense and its origin in the maxim "*Sic utere tuo ut alienum non lædas.*"

Thorpe *vs.* Rutland R. R. Co., 27 Vermont, 149.
American Telegraph Co. *vs.* Western Union Telegraph Company, 67 Ala., 26.

This law has none of the characteristics of a law designed to regulate these or kindred subjects which properly fall within the purview of domestic police. There can be nothing so injurious or offensive in the act of hiring a sin-

gle unemployed laborer as to require police regulation by the State.

* * * If we could see that the legislative purpose was merely to impose a license upon the persons engaged in the business or occupation of hiring persons to leave the State, we would not be justified in declaring the law violative of the constitution because it incidentally affected the right of free egress from the State.

A constitutional right is often affected in this way without a repugnancy which will vitiate the tax. In Osborne *vs.* Mobile, 16 Wallace, 479, it was accordingly held that an annual license tax imposed by the city of Mobile on an express company engaged in that State in carrying on interstate commerce was not repugnant to the Constitution as a regulation of commerce. So a tax imposed by the legislature of Pennsylvania upon the gross receipts of railroad and canal companies doing business between that and other States has been sustained as a proper exercise of the taxing power.

State tax on railroad gross receipts, 15 Wallace, 284.

A constitutional right, however, conferred by the Federal Constitution as such cannot be taxed by the States, either directly or indirectly, because the power to tax carries with it the power to defeat and render useless, if not to destroy.

Pollard *vs.* State, 65 Ala., 628.

McCullough *vs.* Maryland, 4 Wheaton, 316.

A law, as we have seen, would certainly be void which exacted tribute of a citizen as the price of crossing a State line.

Does the tax in question operate manifestly as a tax by indirection upon the right of the citizen to leave the State, or does it so burden this right as to effectually impair it?

No principle of construction is sounder than the common

sense and cardinal rule that "What cannot be done directly cannot be done indirectly."

Ex parte Hadley, 68 Ala., 303.

Cummings *vs.* Missouri, 4 Wallace, 277.

If the law should act upon any other theory, it would subject itself to the just challenge of catching at shadows and not substance.

Hence a constitutional right, though subject to regulation, cannot be impaired or destroyed under the device or guise of being regulated.

South & North Ala. R. R. *vs.* Winn, 65 Ala., 193.

It is easy to see the application of this principle in construing the statute now under review. Every person, including every laborer, has the right of egress from the State—the right to emigrate at his option and in the unobstructed exercise of his free will. He has, therefore, the clear right to contract to exercise it, because it may become the necessary and only means for its successful exercise. If the right itself exists and is lawful, it cannot become unlawful to agree to exercise it.

It may be said, however, that no license is required of the laborer to contract, but only of any one else to contract with him.

The fallacy of the suggestion is apparent, as it takes at least two persons to make a contract. A law forbidding the purchase of any commodity is in effect a law to prohibit its sale. In Ward *vs.* Maryland, 12 Wheaton, 419, it was said that a tax on the sale of an article imported for sale was a tax on the article itself.

So it was decided in Welton *vs.* Missouri, 91 U. S., 275, that a license tax required for the sale of goods was in effect a tax on the goods themselves. The license in that case was sought to be sustained as a tax upon the calling or occupation. In like manner a tax upon passenger carriers of a

specific sum for each passenger transported, has been adjudged to be a tax upon the passengers.

Passenger cases, 7 Howard, 283.

Crandall *vs.* Nevada, 6 Wallace, 35.

The legislative intent, then, is plain upon the face of the act. Its purpose is to prevent free egress of laborers, from the counties designated, out of the State.

There is no tax upon the right of hiring or inducing them to go elsewhere, but a tax of $250, in the form of a license, is exacted of every one who makes a contract with a laborer or otherwise offers him an inducement to leave the State, whether for the service of the principal employer or for that of some other person. The license required might thus amount to twice or three times the annual value of the hireling's labor.

It requires no great draft upon the judicial knowledge to declare that such a tax is in its nature prohibitory, and its natural effect and evident purpose is to seriously clog and impair the laborer's right of free emigration.

Ex parte Brennan, 30 Ala., 461.

Construing the act under consideration by the test of these principles, we do not see how it can be sustained. It must be pronounced void as an indirect tax upon the citizen's right of free egress from the State, operating to hinder the exercise of his personal liberty and seriously impair his freedom of emigration.

Webber *vs.* Virginia, 103 U. S., 344.

Vines *vs.* State, 67 Ala., 73.

Passenger cases, *supra.*

There are other objections urged to this act besides the one we have above considered. It is ably assailed as a species of vicious class legislation applicable alone to laborers and to no other persons in the community.

It is also attacked as being repugnant to the fourteenth amendment of the Federal Constitution, the ground of objection being that it is a denial by the State to laborers, as a class, of the equal protection of the laws.

What force there may be in these objections we need not consider, as it is rendered entirely unnecessary in view of the conclusions to which we have come, pronouncing the law void for other and distinct reasons.

The judgment is reversed and the case remanded.